

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

OLIVA

Serial No. 09/497,552

Filed: February 3, 2000

Atty. Ref.: 3572-15

Group: 2873

Examiner: E. Lester

For: OPTICAL DEVICE, LENS AND OPTICAL ELEMENT FOR FOCUSING A
LASER BEAM AND APPARATUS AND METHOD FOR ASSEMBLING THE
OPTICAL DEVICE

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MAIL STOP AF

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 20313-1450

**AFTER FINAL EXPEDITED
PROCESSING REQUESTED**

OFFICE OF FINAL
REFUND BRANCH
2003 JUL 1 4:47
US PATENT & TRADEMARK
OFFICE

Sir:

**REQUEST FOR REFUND/NOT CHARGING OF
EXTENSION FEE**

A Notice of Appeal is being filed today to compensate for the failure of the US Patent Office to act timely on this application. In view of the failure of the US Patent Office to act timely, it is respectfully requested that the undersigned's deposit account *not* be debited for the two month extension of fee of \$820 which otherwise would be required. Alternatively, if the undersigned's deposit account is automatically debited, it is requested that the two month extension of fee of \$820 be refunded.

A final Official Action was mailed on January 15, 2003. An Amendment After Final was filed and one month extension was paid by facsimile on May 12, 2003. Also on May 12, 2003, the undersigned spoke telephonically with the Examiner to advise of the filing and to request an office interview. The Examiner indicated that she would have to wait to receive the file and then contact the Applicant to explore issues that could be handled by an interview.

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According to the PAIR system (see attached printout of Exhibit 1), the application and Amendment After Final were forwarded two days later (May 14, 2003) to the Examiner.

On May 22, 2003, the Examiner spoke with the undersigned' secretary, acknowledging receipt of the Amendment After Final and reporting that the examiner is "stopping the clock". An Interview Summary form was mailed on May 23, 2003 (see Exhibit 3) to "confirm that the after final response was received. No further action is required in response to this Interview Summary".

After several attempts to reach the Examiner telephonically, on June 2, 2003 the undersigned spoke with the Examiner. In that telephone conversation, the Examiner informed the undersigned "that the applicant has been fully responsive to the final office action and that no further action is required by the applicant at this time." The Examiner indicated that she had noted applicant's comments relating the provisional obviousness type double patenting rejection, and MPEP §804 in particular, relating to co-pending US SN 09/773,384. The Examiner stated that she was not in charge of co-pending US SN 09/773,384, and wanted to coordinate with the Examiner working on US SN 09/773,384 and possibly review the file of the '384 application to check, e.g., if there is other prior art which she could consider and cite. The Examiner indicated that she should act on the case by this end of this week, barring any unusual circumstances.

After the week expired with no further communication, in June the undersigned made several follow-up telephone attempts to reach the Examiner. Finally, on June 16, 2003, the undersigned spoke with the Examiner and was informed that the Examiner was 98% certain that the finality will be withdrawn and a new non-final action would issue. The Examiner stated that there would not be an advisory action. The undersigned again complained about extension of time fees. The Examiner remained adamant that the client would not have to pay any more extension of time fees, moreover that it would be a travesty if any fees were assessed, and if they were assessed, she would "pay them herself". The Examiner apologizes profusely that "this has taken so long".

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The MPEP requires that, after receipt of an amendment after final, action be taken within ten days. No appropriate action was taken in this case. The undersigned has been waiting for the promised withdrawal of the finality of the extant Office Action and the mailing of a new Office Action.

Extension of time fees would not be an issue in this case if timely action had been taken by the US Patent Office. The US Patent Office has failed to mail even an advisory action or the promised non-final action. Therefore, it is respectfully requested that the applicant not be assessed the extension of time fees which otherwise would accompany the notice of appeal filed today.

Respectfully submitted,
NIXON & VANDERHYE P.C.

July 15, 2003

By: 

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